

REMARKS/ARGUMENTS

A. Summary of the Amendments

The application now contains 23 claims.

Claims 49, 58 and 64 have been cancelled without prejudice.

Claims 46, 47, 55 and 56 have been identified as being withdrawn as being drawn to a non-elected species.

Claims 42, 44, 50-51, 53, 59-60, 66 and 67 have been amended to clarify the language of the claims and for reasons unrelated to the art cited by the Examiner. The applicant submits that the amendments made to the above listed claims do not narrow the scope of these claims.

Claims 43, 45, 48, 52, 54, 57, 61-63 and 65 are unchanged by the present amendment.

The applicant has amended the specification to introduce therein the exact language of the independent claims such as to provide suitable antecedent basis for the nomenclature used in the claims. In addition, minor amendments have been made to the specification to ensure suitable antecedent basis for the term "rate of purge" namely in table 1 and table 2 appearing on pages 5 and 6 respectively.

The Applicant submits that support for the amendments to the claims and the specification exists in the application as originally filed and that no new matter is being added to the present application through the present amendment.

B. Withdrawn claims 46, 47, 55 and 56

In the office action, the examiner has indicated that claims 46, 47, 55 and 56 are withdrawn from further consideration as being drawn to a non-elected species and in light of the absence of an allowable generic or linking claim. The applicant has identified claims 46, 47, 55 and 56 in the listing of claims as being withdrawn. The applicant expects that these claims will be re-introduce in the present application if a generic or linking claim in the present application is found to be allowable.

C. Objection to the Specification

The Examiner has objected to the specification as failing to provide proper antecedent basis for the claimed subject matter.

More specifically, the examiner has requested that the specification be amended in order to provide proper antecedent basis for the following terms:

- rate of purge data element (claims 42, 51, 60 and 66)
- method (claim 60)
- means (claim 66).

In response to the examiner's objection, the applicant has amended the specification in order to provide suitable antecedent basis for the use of the term "rate of purge data element". [see table 1, table 2 and the section entitled SUMMARY OF THE INVENTION].

With respect to the use of the terms "method" and "means" the applicant disagrees with the examiner's objection. Section 37 CFR 1.75(d)(1) provides that "The claim or claims must conform to the invention as set forth in the remainder of the specification and the terms and phrases used in the claims must find clear support or antecedent basis in the description **so that the meaning of the terms in the claims may be ascertainable by reference to the description.** (See § 1.58(a))."

The applicant submits that the meaning of terms such as “method” and “means” is clear and the exact use of these terms in the specification is not required for their meaning to be easily ascertainable by a person skilled in the art. Nevertheless, in order to move this case forward toward allowance, the applicant has amended the specification in order to introduce in the summary of the invention section of the specification the exact language of independent claims 42, 51, 60, 66 and 67. As such, it is respectfully submitted that the specification provides suitable antecedent basis for the use of the terms “rate of purge data element”, “method” and “means” and that the examiner’s objection with respect to claims 42, 51, 60 and 66 has been overcome.

The Applicant submits that support for the amendments to the specification exists in the application as originally filed and that no new matter is being added to the present application through the present amendment.

D. Statements of Rejection under 35 USC §112

Claims 49, 58 and 64

In the Office Action, the Examiner rejected claims 49, 58 and 64 under 35 U.S.C. §112 first paragraph as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

More specifically, the Examiner indicated that the claims recite activating a water heater in response to “a rate of purge data element” and that this subject matter was not found in the originally filed disclosure and is therefore considered to be new matter.

The applicant respectfully disagrees and submits that the subject matter of claims 49, 58 and 64 is supported by the specification as originally filed. Amongst other, support for the activation and deactivation of the water heater is provided on p. 3 lines 7-14 of the summary of the application.

Nevertheless, in order to move this matter forward, the applicant has cancelled claims 49, 58 and 64.

Claims 62-65

In the Office Action, the Examiner rejected claims 62-65 under 35 U.S.C. §112 second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claims 62 - 65, the Applicant is unclear as to why the examiner feels that claims 62-65 fail to satisfy 35 U.S.C. §112 second paragraph, as the Examiner has not provided any explanation for his rejection. As such the Applicant respectfully requests that the Examiner either withdraw his rejection under 35 U.S.C. §112 regarding these claims or that the Examiner provides an explanation so that the Applicant may better understand and address the reasons for the Examiner's rejection.

Claim 60

In the Office Action the Examiner indicated that he was of the view that claim 60 was ambiguous in that it attempted to embrace two different statutory classes of invention. More specifically, the Examiner indicated that the claim's preamble recites "a method", but the body thereof attempts to rely upon product/apparatus limitations for patentability. In support of his argument, the Examiner has referred to *IPXL Holdings v. Amazon.com Inc.* 77 USPQ2d 1140.

The applicant respectfully disagrees.

In *IPXL Holdings v. Amazon.com Inc.* 77 USPQ2d 1140, the court indicated that a single patent claim **covering both apparatus and method** of using the apparatus was invalid for indefiniteness. In this particular case, the court considered claim 25 of U.S. patent 6,149,055 (the '055 patent). Claim 25 of the '055 patent reads as follows [*our emphasis*]:

25. **The system** of claim 2 wherein the predicted transaction information comprises both a transaction type and transaction parameters associated with that transaction type, **and the user uses the input means** to either change the predicted transaction information or accept the displayed transaction type and transaction parameters.

This is not the situation for claim 60 of the present application at all. The text of claim 60 is reproduced below for the reader's ease of reference:

60. A method for preventing water from freezing in piping associated to a spa system, said method comprising:
- a) obtaining a measurement of an ambient air temperature near the spa system;
 - b) processing said measurement to derive a rate of purge data element, said rate of purge data element being associated to a certain ambient air temperature;
 - c) at least in part on the basis of said rate of purge data element, repetitively causing at least one pump of the spa system to be activated for a certain time period and then deactivated.

The applicant submits that claim 60 does not recite an apparatus and a method of using the apparatus. Rather claim 60 pertains to a method for preventing water from freezing in piping associated to a spa system. Claim 60 merely recites steps of the method.

The applicant is unclear as to the meaning of the Examiner's argument that "the body thereof attempts to rely upon product/apparatus limitations for patentability". Insofar as the examiner's argument is that method claims are not permitted to recite steps for causing devices or system to perform certain functionality, the applicant respectfully disagrees and submits that the case cited by the examiner does not support the examiner's position. The applicant is of the view that the case law relied upon by the examiner, namely *IPXL Holdings v. Amazon.com Inc.* 77 USPQ2d 1140, in no way implies that a method claim cannot include steps for causing devices/apparatuses to perform certain actions. Rather *IPXL Holdings v. Amazon.com Inc.* 77 USPQ2d 1140 indicates that a claim which would recite both a system and the method of using that system would be invalid under section 112, paragraph 2.

Insofar as the examiner's argument is that method claims cannot recite steps of using a device or system, the applicant respectfully also disagrees and submits that the case cited by the examiner does not support the examiner's position. There is nothing in IPXL Holdings v. Amazon.com Inc. 77 USPQ2d 1140 that indicates that a method of using a system (or apparatus) would be invalid under 35 USC section 112, paragraph 2. Again, IPXL Holdings v. Amazon.com Inc. 77 USPQ2d 1140 indicates that a claim which would recite both a system and the method of using that system would be invalid under section 112, paragraph 2.

In light of the above, the Applicant respectfully requests that the Examiner withdraw his rejection under 35 U.S.C. §112 second paragraph regarding claim 60.

If the examiner continues to be of the view that claim 60 should be considered invalid under section 112, paragraph 2, the applicant respectfully requests that the Examiner provides a clarification as to how IPXL Holdings v. Amazon.com Inc. 77 USPQ2d 1140 supports his position.

E. Statements of Rejection under 35 USC §102(b) and 35 USC §103 and Reply

In the Office Action, the Examiner has rejected claims 42-45, 49, 51-54, 58, 60, 64, 66 and 67 under 35 U.S.C. §102(b) as being anticipated by the applicants' acknowledged prior art.

The Examiner has further rejected claims 42, 43, 45, 51, 52 and 54 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent 4,685,158 (hereafter referred to as Lively).

The Examiner has further rejected claims 42-45, 49, 51-54, 58, 60-64, 66 and 67 under 35 U.S.C. §103(a) as being unpatentable over U.S. patent no. 5,559,720 (hereafter referred to as Tompkins et al.) in view of Lively.

The Examiner has further rejected claims 48 and 57 under 35 U.S.C. §103(a) as being unpatentable over Tompkins et al. and Lively as applied to claims 42 and 51 above in further view of US Patent 4,233,694 (hereafter to be referred to as Janosko et al.).

The Examiner has further rejected claims 50, 59 and 65 under 35 U.S.C. §103(a) as being unpatentable over Tompkins et al. and Lively as applied to claims 42 and 51 above in further view of U.S. patent no. 4,189,791 (hereafter referred to as Dundas).

In response to the Examiner's objection, the Applicant has amended the claims in order to clarify the language of the claims.

For the reasons presented below, the Applicant respectfully submits that claims 42-45, 48, 50-54, 57, 59-63, 65-67, as amended are neither taught nor rendered obvious by the documents cited by the Examiner. Claims 46, 47, 55 and 56 have been identified as being withdrawn and as such will not be addressed in the present response. In addition, claims 49, 58 and 64 have been cancelled and as such rejections regarding these claims are considered moot and will not be addressed in the present response.

Claim 42

Independent claim 42, as amended, reads as follows:

42. A freeze control system for a spa, said freeze control system comprising:
- a) a temperature sensor suitable for obtaining a measurement of an ambient air temperature near the spa;
 - b) a spa controller in communication with said temperature sensor for receiving a signal conveying said measurement of the ambient air temperature near the spa, **said spa controller being programmed for:**
 - i) **processing said signal to derive a rate of purge data element, said rate of purge data element being associated to a certain ambient air temperature;**
 - ii) **at least in part on the basis of the rate of purge data element, repetitively causing at least one pump of the spa to be activated for a certain time period and then deactivated,** such as to repetitively cause the at least one pump of the spa to run for the certain time period.

The Applicant submits that the subject matter of claim 42 is neither anticipated nor rendered obvious by the documents cited by the Examiner or by the applicants' acknowledged prior art. Without limiting the generality of the foregoing, the applicant submits that the above emphasized limitations of claim 42 are neither taught nor suggested by the applicants' acknowledged prior art, Lively or Tompkins et al. considered alone or in combination.

More specifically, the applicant respectfully submits that none of the documents cited teach nor suggest "**at least in part on the basis of the rate of purge data element, repetitively causing at least one pump of the spa to be activated for a certain time period and then deactivated**" where the rate of purge data element is associated to the ambient air temperature near the spa.

Applicants' acknowledged prior art (102b) rejection

In the Office Action, the Examiner argued that the subject matter of claims 42, as it stood prior to the present amendment, was anticipated by the applicants' acknowledged prior art. The applicant respectfully disagrees with the Examiner and submits that the subject matter of claim 42 is not anticipated in any way by the applicants' acknowledged prior art.

More specifically, the applicant submits that the prior art described in the present application with reference to figure 1 of the drawings does not teach or suggest the following features of claim 42:

- a temperature sensor suitable for obtaining a measurement of an ambient air temperature near the spa;
- a spa controller [...] programmed for processing said signal to derive a rate of purge data element, said rate of purge data element being associated to a certain ambient air temperature; and
- a spa controller [...] programmed for at least in part on the basis of the rate of purge data element, repetitively causing at least one pump of the spa to be activated for a certain time period and then deactivated, such as to repetitively cause the at least one pump of the spa to run for the certain time period.

Firstly, there is nothing in the applicants' acknowledged prior art (described with reference to figure 1 of the present application) that teaches or suggests the use of a temperature sensor suitable for obtaining a measurement of an ambient air temperature near the spa.

In the Office Action, the Examiner indicated that “a temperature sensor suitable for obtaining a measurement associated to an ambient air temperature near the spa;” could be interpreted on a water temperature sensor, specifically as sensor 3 (shown in figure 1 of the present application). In support of his position, the Examiner argued that the air temperature would affect the spa and the components associated therewith.

The Applicant disagrees with the examiner and submits that the sensor 3 (shown in figure 1 of the present application) is a water temperature sensor for measuring the temperature

of the water within a spa tub and has nothing to do with obtaining a measurement associated to an ambient air temperature. While it can be argued that the ambient air temperature would have some influence on the water temperature in the spa tub, the applicant submits that a person skilled in the art would not consider that sensor 3 would obtain a measurement “associated to an ambient air temperature”.

Nevertheless, in order to move this matter forward, the applicant has modified the language of the claim so as to refer to “measurement of an ambient air temperature near the spa” rather than “a measurement associated to an ambient air temperature near the spa;”.

Since sensor 3 measures a water temperature inside the tub 7 (shown in figure 1 of the present application) and does not obtain a measurement of an ambient air temperature, the applicant submits that, in light of the amendments made to claim 42, sensor 3 cannot be considered as corresponding to:

“a temperature sensor suitable for obtaining a measurement of an ambient air temperature near the spa;”

Secondly, there is nothing in the applicants’ acknowledged prior art (described with reference to figure 1 of the present application) that teaches or suggests:

“ a spa controller [...] programmed for:

- iii) **processing said signal to derive a rate of purge data element, said rate of purge data element being associated to a certain ambient air temperature;**
- iv) **at least in part on the basis of the rate of purge data element, repetitively causing at least one pump of the spa to be activated for a certain time period and then deactivated, such as to repetitively cause the at least one pump of the spa to run for the certain time period.”**

In the Office Action, the Examiner indicated that, with reference to claim 42 as it stood prior to the present amendment, the controller 11 (shown in figure 1 of the present

application) is a processor that would be capable of performing the recited function (i.e. “being operative for”).

It is unclear to the applicant what the examiner means when he says that “processor that would be capable of performing the recited function.”

Insofar as the Examiner’s position is that the terminology “being operative for” could be unclear, the applicant has modified the language of claim 42 so that it now read “said spa controller being programmed for” instead of “said spa controller being operative for”.

If the Examiner’s argument is that the controller 11 could be capable of performing the recited functions had it been programmed to do so, the Applicant submits that the Examiner’s reasoning is improper. The applicant submits that the mere possibility of being able to program a controller 11 with a certain functionality/feature does not in itself render the functionality/features that could be programmed known or obvious.

There is nothing in the applicants’ acknowledged prior art, nor in any of the documents set forth by the examiner, that teaches or remotely suggests repetitively causing a pump of a spa to run for a certain time period where the rate of repetition is related to the ambient air temperature.

In addition, in the absence of hindsight afforded by the present application, there is also no motivation whatsoever in the art for modifying the controller 11 described with reference to figure 1 of the present application in such a way that it would perform the recited functions.

As such, the applicant submits that the subject matter of claim 42 is novel and non-obvious in light of the applicants’ acknowledged prior art.

Lively et al. (102b) rejection

In the Office Action, the Examiner argued that the subject matter of claims 42, as it stood prior to the present amendment, was anticipated by *Lively et al.*.

The applicant respectfully disagrees with the Examiner and submits that the subject matter of claim 42 is not anticipated in any way by *Lively et al.*.

More specifically, the applicant submits that *Lively et al.* does not teach or suggest the following features of claim 42:

- a spa controller [...] programmed for processing said signal to derive a rate of purge data element, said rate of purge data element being associated to a certain ambient air temperature; and
- a spa controller [...] programmed for at least in part on the basis of the rate of purge data element, repetitively causing at least one pump of the spa to be activated for a certain time period and then deactivated, such as to repetitively cause the at least one pump of the spa to run for the certain time period.

Lively makes use of a temperature sensing circuit 110 and sensing element 111 where is the sensing element is mounted so as to be exposed to ambient air (see column 6, lines 41-52). However, *Lively* merely relies on the temperature measurement to actuate a relay. There is nothing in *Lively* that teaches or remotely suggests repetitively causing a pump of a spa to run for a certain time period where the rate of repetition is related to the ambient air temperature.

In the Office Action, the Examiner indicated that, the controller of *Lively* is capable of performing the recited function (i.e. “being operative for”). Insofar as the Examiner’s position is that the terminology “being operative for” could be unclear, the applicant has modified the language of claim 42 to that it now read “said spa controller being programmed for” instead of “said spa controller being operative for”. If the Examiner’s argument is that the controller in *Lively* could be programmed to perform the recited functions, the Applicant submits that the Examiner’s reasoning is improper. The applicant submits that the mere possibility of being able to program a controller with a

certain functionality/feature does not in itself render the functionality/features that could be programmed known or obvious.

There is nothing in Lively that teaches or remotely suggests repetitively causing a pump of a spa to run for a certain time period where the rate of repetition is related to the ambient air temperature.

In addition, in the absence of hindsight afforded by the present application, there is also no motivation whatsoever in the art for modifying the teachings of Lively et al. in such a way that it would read on the claimed invention.

As such, the applicant submits that the subject matter of claim 42 is novel and non-obvious in light of Lively et al.

Tompkins in light of Lively et al. (103 a) rejection)

In the Office Action, the Examiner argued that the subject matter of claims 42, as it stood prior to the present amendment, was rendered obvious by Tompkins et al. in view of Lively et al..

The applicant respectfully disagrees with the Examiner and submits that the subject matter of claim 42 is not rendered obvious by Tompkins et al. in view of Lively et al..

More specifically, the applicant submits that neither Tompkins et al. nor Lively et al. teach or suggest the following features of claim 42:

- a spa controller [...] programmed for processing said signal to derive a rate of purge data element, said rate of purge data element being associated to a certain ambient air temperature; and
- a spa controller [...] programmed for at least in part on the basis of the rate of purge data element, repetitively causing at least one pump of the spa to be activated for a certain time period and then deactivated, such as to repetitively cause the at least one pump of the spa to run for the certain time period.

In Tompkins, “the microcomputer assesses the time necessary to heat water from an initial temperature to a selected temperature. From this information, the heating rate of the water can be calculated. The heating rate can be stored by the microcomputer and can be used to determine the start time necessary to heat the spa water from an initial temperature to a selected temperature by a desired time.” [see column 2, lines 4-10]. There is nothing in Tompkins that describes repetitively causing a pump of a spa to run for a certain time period where the rate of repetition is related to the ambient air temperature. Rather in Tompkins, the heating (or cooling) rate of the water is determined and then used to determine when the heater should be activated to achieve a desired water temperature at a given time.

As argued above, Lively makes use of a temperature sensing circuit 110 and sensing element 111 where the sensing element is mounted so as to be exposed to ambient air (see column 6, lines 41-52). However, Lively merely relies on the temperature measurement to actuate a relay. There is nothing in Lively that teaches or remotely suggests repetitively causing a pump of a spa to run for a certain time period where the rate of repetition is related to the ambient air temperature.

Conclusion

In light of the above, the Applicant submits that that neither the applicants’ acknowledged prior art nor the documents cited by the Examiner teach nor suggest “***at least in part on the basis of the rate of purge data element, repetitively causing at least one pump of the spa to be activated for a certain time period and then deactivated.***” where the rate of purge data element is associated to the ambient air temperature near the spa.

In light of the above, the Applicant submits that the subject matter of claim 42, is neither taught nor suggested by the documents cited by the Examiner or by the applicants’ acknowledged prior art. Consequently, the Applicant submits that claim 42 is patentable.

Claims 43-45, 48 and 50

Claims 43-45, 48 and 50 depend directly or indirectly from claim 42 and as such incorporate by reference all its limitations. As such, the applicant submits that the subject matter of claims 43-45, 48 and 50 is also neither taught nor suggested by the documents cited by the Examiner or by the applicants' acknowledged prior art.

Claim 51

Independent claim 51, as amended, reads as follows:

51. A spa system having water freeze control capabilities, said spa system comprising:
- a) a spa tub for holding water;
 - b) a water heater;
 - c) spa piping interconnecting said spa tub and said water heater, said spa piping including at least one pump for circulating water between said water heater and said spa tub;
 - d) a temperature sensor suitable for obtaining a measurement of an ambient air temperature near said spa system;
 - e) a spa controller in communication with said temperature sensor for receiving a signal conveying said measurement of the ambient air temperature near said spa system, **said spa controller being programmed for:**
 - i) **processing said signal conveying said of the ambient air temperature near said spa system to derive a rate of purge data element, said rate of purge data element being associated to a certain ambient air temperature;**
 - ii) **at least in part on the basis of the rate of purge data element, repetitively causing the at least one pump of the spa to be activated for a certain time period and then deactivated, such as to repetitively cause the at least one pump of the spa to run for the certain time period.**

The Applicant submits that the subject matter of claim 51 is neither anticipated nor rendered obvious by the documents cited by the Examiner or by the applicants' acknowledged prior art. Without limiting the generality of the foregoing, for the same reasons as those set forth with respect to claim 42, the applicant submits that the above emphasized limitations of claim 51 are neither taught nor suggested by the applicants' acknowledged prior art, Lively or Tompkins et al. considered alone or in combination.

In light of the above, the Applicant submits that the subject matter of claim 51, is neither taught nor suggested by the documents cited by the Examiner or by the applicants' acknowledged prior art. Consequently, the Applicant submits that claim 51 is patentable.

Claims 52-54, 57 and 59

Claims 52-54, 57 and 59 depend directly or indirectly from claim 51 and as such incorporate by reference all its limitations. As such, the applicant submits that the subject matter of claims 52-54, 57 and 59 is also neither taught nor suggested by the documents cited by the Examiner or by the applicants' acknowledged prior art.

Claim 60

Independent claim 60, as amended, reads as follows:

60. A method for preventing water from freezing in piping associated to a spa system, said method comprising:
 - a) obtaining a measurement of an ambient air temperature near the spa system;
 - b) **processing said measurement to derive a rate of purge data element, said rate of purge data element being associated to a certain ambient air temperature;**
 - c) **at least in part on the basis of said rate of purge data element, repetitively causing at least one pump of the spa system to be activated for a certain time period and then deactivated.**

The Applicant submits that the subject matter of claim 60 is neither anticipated nor rendered obvious by the documents cited by the Examiner or by the applicants' acknowledged prior art. Without limiting the generality of the foregoing, for the same reasons as those set forth with respect to claim 42, the applicant submits that the above emphasized limitations of claim 60 are neither taught nor suggested by the applicants' acknowledged prior art, Lively or Tompkins et al. considered alone or in combination.

On p. 5 of the Office Action, the Examiner indicated “Re claim 60, the controller 11 can operate to “repetitively” activate both the pump 13 and heater 9 (p. 2 of the instant specification)”.

However, as argued above there is nothing in the applicants’ acknowledged prior art or in the documents cited by the Examiner teaches nor suggest “*at least in part on the basis of said rate of purge data element, repetitively causing at least one pump of the spa to be activated for a certain time period and then deactivated.*” where the rate of purge data element is associated to the ambient air temperature near the spa. The mere possibility that the controller 11 “could” operate to implement the steps recited in claim 60 is not sufficient to either anticipate nor render obvious the subject matter of claim 60.

In light of the above, the Applicant submits that the subject matter of claim 60, is neither taught nor suggested by the documents cited by the Examiner or by the applicants’ acknowledged prior art. Consequently, the Applicant submits that claim 60 is patentable.

Claims 61-63 and 65

Claims 61-63 and 65 depend directly or indirectly from claim 60 and as such incorporate by reference all its limitations. As such, the applicant submits that the subject matter of claims 61-63 and 65 is also neither taught nor suggested by the documents cited by the Examiner or by the applicants’ acknowledged prior art.

Claim 66

Independent claim 66, as amended, reads as follows:

- 66. A freeze control system for a spa, said freeze control system comprising:
 - a) means for obtaining a measurement of an ambient air temperature near the spa;
 - b) **means for processing said measurement to derive a rate of purge data element;**

- c) **means for repetitively causing, at least in part on the basis of the rate of purge data element, at least one pump of the spa to be activated for a certain time period and then deactivated, such as to repetitively cause the at least one pump of the spa to run for the certain time period.**

The Applicant submits that the subject matter of claim 66 is neither anticipated nor rendered obvious by the documents cited by the Examiner or by the applicants' acknowledged prior art. Without limiting the generality of the foregoing, for the same reasons as those set forth with respect to claim 42, the applicant submits that the above emphasized limitations of claim 66 are neither taught nor suggested by the applicants' acknowledged prior art, Lively or Tompkins et al. considered alone or in combination.

In light of the above, the Applicant submits that the subject matter of claim 66, is neither taught nor suggested by the documents cited by the Examiner or by the applicants' acknowledged prior art. Consequently, the Applicant submits that claim 66 is patentable.

Claim 67

Independent claim 67, as amended, reads as follows:

- 67. A freeze control system for a spa, said freeze control system comprising:
 - a) a temperature sensor suitable for obtaining a measurement of an ambient air temperature near the spa;
 - b) a spa controller in communication with said temperature sensor for receiving a signal conveying said measurement of the ambient air temperature near the spa, **said spa controller being programmed for repetitively causing at least one pump of the spa to be activated for a certain time period and then deactivated at a repetition rate conditioned at least in part on the basis of said measurement associated to an ambient air temperature near the spa.**

The Applicant submits that the subject matter of claim 67 is neither anticipated nor rendered obvious by the documents cited by the Examiner or by the applicants' acknowledged prior art. Without limiting the generality of the foregoing, for the same reasons as those set forth with respect to claim 42, the applicant submits that the above

emphasized limitations of claim 67 are neither taught nor suggested by the applicants' acknowledged prior art, Lively or Tompkins et al. considered alone or in combination.

In light of the above, the Applicant submits that the subject matter of claim 67, is neither taught nor suggested by the documents cited by the Examiner or by the applicants' acknowledged prior art. Consequently, the Applicant submits that claim 67 is patentable.

CONCLUSION

It is respectfully submitted that claims 42-45, 48, 50-54,57, 59-63, 65-67, as amended, are in condition for allowance. Reconsideration of the rejections and objections is requested. Allowance of claims 42-45, 48, 50-54,57, 59-63, 65-67 at an early date is solicited.

If the claims of the application are not considered to be in full condition for allowance, for any reason, the Applicant respectfully requests the constructive assistance and suggestions of the Examiner in drafting one or more acceptable claims or in making constructive suggestions so that the application can be placed in allowable condition as soon as possible and without the need for further proceedings.

Respectfully submitted,

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